

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BRADY BENNETT, *individually and on
behalf of all others similarly situated*,

Plaintiff,

v.

CLEAR HEALTH, LLC,

Defendant.

Civil Action No. 1:21-cv-1117

Class-Action

Jury Trial Demanded

CLASS ACTION COMPLAINT

COMES NOW, Plaintiff, **Brady Bennett** (“Plaintiff” or “Mr. Brady”), and on behalf of all others similarly situated, through his counsel, and for his Class Action Complaint against Defendant **Clear Health, LLC** (“Defendant” or “Clear Health”), states:

Introduction

1. Plaintiff’s Class-Action Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §227, *et seq.*, and the Texas Telephone Solicitation Act, (“TTSA”), Tex. Bus. & Com. Code § 302.101 *et seq.*

2. In 1991, President George H.W. Bush signed into law the TCPA, which was passed in a bi-partisan manner, to protect consumers’ privacy rights. Specifically, the right to be left alone from unwanted telemarketing calls.

3. A leading sponsor of the TCPA described telemarketing “robocalls” the “scourge of modern civilization.” 137 Cong. Rec. 30821 (1991).

4. The TCPA, through the accompanying Code of Federal Regulations, 47 C.F.R. § 64.1200 *et seq.*, affords special protections for people who registered their phone numbers on the National Do Not Call Registry.

1 5. Where a consumer's phone number is registered on the Do Not Call registry, the
2 TCPA requires that telemarketers provide clear and conspicuous notice to the consumer that it
3 will be making telemarketing calls for solicitation or advertising purposes, and requires that the
4 consumer provide express written consent.

5 6. Section 227(c)(5) of the TCPA provides that each person who receives more
6 than one call within a 12-month period on their phone, where that person did not provide
7 express written consent upon a clear and conspicuous disclosure from the telemarketer, after the
8 phone number was registered on the National Do Not Call Registry for more than 31 days is
9 entitled to recover a penalty of \$500 per call, and up to \$1,500 per call if the TCPA is willfully
10 or knowingly violated.

11 7. To afford additional protections from telemarketing calls for persons with Texas
12 area codes, the Texas legislature has enacted the Texas Telephone Solicitation Act ("Texas
13 TSA"), codified at § 302.101 *et seq.* of the Texas Business and Commerce Code. The Texas
14 Business and Commercial Code prohibits businesses from engaging in telephone solicitations in
15 Texas or to consumers located in Texas unless the business first obtains a registration certificate
16 from the Office of the Secretary of State for the business location from which the solicitation is
17 made.
18

19 8. Plaintiff seeks to exercise his rights under the TCPA and the Texas TSA against
20 Defendant Clear Health on behalf of himself and other similarly situated putative class-
21 members.
22
23
24
25

The Parties

9. Plaintiff, Brady Bennett, is an adult citizen who at all times relevant to this Complaint resided in Cedar Park, Texas.

10. Defendant is a business entity with a principal place of business, head office, or otherwise valid mailing address at 1537 Swearingen Drive, Bel Air, Maryland 21014.

11. Clear Health is a for-profit healthcare company that sells Medicare plans to seniors.

12. Clear Health transacts business in Texas and throughout the United States.

Jurisdiction and Venue

13. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

14. Supplemental jurisdiction for Plaintiff's related state law claims arises under 28 U.S.C. §1367.

15. Defendant continuously and systematically transacts business in the State of Texas.

16. Defendant placed calls to Plaintiff on his cell phone number with a "512" area code, which is a Texas area code associated with the Austin region.

17. Defendant's phone calls attempted to solicit business from Plaintiff.

1 18. Plaintiff received the unwanted telemarketing calls while residing in the State of
2 Texas.

3 19. At all times relevant hereto, Plaintiff resided in Williamson County, which is
4 within this District.

5 20. Plaintiff experienced the harm associated with Defendant's irritating and
6 invasive telemarketing calls while he was in this District.

7 21. For the foregoing reasons, personal jurisdiction exists and venue is proper,
8 pursuant to 28 U.S.C. § 1391(b)(2).
9

10 **Background: Telemarketing and Soundboard Technology**

11 22. During the past decade the already-controversial telemarketing industry has
12 taken a turn to the dystopian.
13

14 23. Certain call centers and telemarketing companies have shifted their primary
15 method of calling from live agents who speak on the phone with consumers to avatar or
16 "soundboard" technology, where an operator will click buttons to play specific pre-recorded
17 phrases and/or software is programmed to verbally respond to certain prompts from the
18 consumer.

19 24. The reasons for using the avatar or soundboard technology are simple: using
20 software is cheaper than employing call center representatives, software does not exhibit human
21 emotions, and the pre-recorded or automated voices will not have the accents present in many
22 employees of overseas call centers who place calls to American consumers. *See* Alexis C.
23 Magrigal: *Almost Human: The Surreal, Cyborg Future of Telemarketing*, The ATLANTIC
24 (December 23, 2013), *available* *at*:
25

<https://www.theatlantic.com/technology/archive/2013/12/almost-human-the-surreal-cyborg-future-of-telemarketing/282537/>).¹

25. In recent years, there have been many complaints from consumers about telemarketers that use soundboard technology related to the inability to interact with the technology in a manner that is akin to a traditional two-way conversation. Soundboard Ass'n v. FTC, 435 U.S. App. D.C. 208, 209, 888 F.3d 1261, 1262 (D.C. Circ. 2018) (upholding Federal Trade Commission (FTC) staff opinion that the technology constituted an “artificial or pre-recorded voice” as defined by the TCPA); FCC Declaratory Ruling and Order DA 20-1507 (Dec. 18, 2020) (Federal Communications Commission (FCC) rejects challenge from soundboard-using alarm company and instead adopting the rulings of the FTC and D.C. Circuit.)

26. Accordingly, both the FTC and FCC concluded that “soundboard technology” should be treated as a pre-recorded or artificial voice, even if a live agent can select verbal phrases in response to human prompts. Soundboard Ass'n v. FTC, 435 U.S. App. D.C. 208, 209, 888 F.3d 1261, 1262 (D.C. Circ. 2018) (upholding FTC staff opinion that the technology constituted an “artificial or pre-recorded voice” as defined by the TCPA); FCC Declaratory Ruling and Order DA 20-1507 (Dec. 18, 2020) (rejecting challenge from alarm company that utilized soundboard technology, and instead agreeing with the FTC and D.C. Circuit.)

27. Notable excerpts from the FCC Declaratory Ruling follow:

8. these commenters [those complaining of “interactions” with soundboard technology] indicate that the live agent rarely, if ever, speaks on such calls, and they offer examples of prerecorded responses to consumer questions via soundboard technology that are often nonsensical...

¹ This article does not use the term “soundboard technology” but rather “avatar” and “agent-assisted automation technology” The term “soundboard” appears to have been prevalent subsequent to this 2013 article.

11. Our decision is consistent with the FTC staff opinion on the applicability of its parallel Telemarketing Sales Rule to soundboard technology. Specifically, the FTC staff found that soundboard technology “delivers a prerecorded message” under the plain language of the rule and that, based on consumer complaints and press reports, does not “represent a normal, continuous, two-way conversation” because, among other things, the recordings do not always respond to consumer questions and the call is terminated in response to such questions

16. the record indicates that soundboard agents routinely monitor multiple telephone calls simultaneously while rarely, if ever, speaking on these calls, and that the prerecorded messages they use are sometimes nonsensical to the consumer...

FCC Declaratory Ruling and Order DA 20-1507.

28. Despite the problematic nature of soundboard technology, because of its apparent capacity for cost-saving, soundboard technology is still utilized by companies such as Clear Health.

Brady Bennett, Clear Health and “Soundboard Tom”

29. At all times relevant hereto, Plaintiff, Brady Bennett maintained a cell phone, the number for which was (512) XXX-5325.

30. Mr. Bennett used that cell phone primarily for residential purposes.

31. Mr. Bennett registered his cell phone number on the National Do Not Call Registry on or around November 20, 2008.

1 32. Mr. Bennett registered that cell phone number on the Do Not Call list in order to
2 obtain solitude from invasive and harassing telemarketing calls.

3 33. Defendant Clear Health is an insurance company that sells, *inter alia*, Medicare
4 supplemental insurance.

5 34. Clear Health engages in telemarketing in order to solicit health insurance plans
6 to customers.

7 35. Clear Health uses artificial and/or pre-recorded voice(s) in its telemarketing
8 calls. Specifically, Clear Health uses “soundboard” or avatar voice technology in its
9 telemarketing campaigns.

10 36. Before Clear Health began placing telemarketing calls to Mr. Bennett’s cell
11 phone, Mr. Bennett did not provide consent for Clear Health to place such telemarketing calls.

12 37. Likewise, Clear Health did not present a clear and conspicuous disclosure to Mr.
13 Bennett that it would make telemarketing calls to his cell phone.

14 38. Mr. Bennett had no prior business relationship with Clear Health.

15 39. Mr. Bennett was not in the market for Medicare supplemental insurance and had
16 not consented to receive calls from telemarketers selling the same.

17 40. Prior to the solicitation calls at issue, Mr. Bennett never inquired of Clear
18 Health about any products or services.

19 41. On at least six (6) unique instances in 2021, Clear Health placed invasive and
20 irritating telemarketing calls to Mr. Bennett’s cell phone on multiple occasions using
21 soundboard technology, in furtherance of its efforts to sell Medicare supplemental insurance
22 plans.
23

24 42. A concise summary of those calls follows below:
25

Call 1: March 4, 2021 2:30 pm CST

Bennett received a call from (512) 735-8399. A pre-recorded voice purported to be a young-sounding man named “Tom” (hereinafter “Soundboard Tom”) appeared on the line for Clear Health, stating:

“Hi! This is Tom. I’m with the Medicare Department at the Health Care Center, how are you doing today?” The voice continued... “We are here to compare your secondary health insurance options to see if you might qualify for something more beneficial. And the best part is there is no cost or obligation on your part for the discounted quote so is your Medicare part A and Part B active right now?”

In response to Mr. Bennett question “are you a recording?”, Soundboard Tom quickly and enthusiastically said “No!” and then immediately and awkwardly began to pitch to Mr. Bennett various health insurance plans.

Call 2: March 5, 2021 3:51 pm CST from

Bennett received a call from Clear Health at (512) 735-8399. Soundboard Tom’s pre-recorded voice once again appeared on the line for Clear Health, stating:

“Hi! This is Tom. I’m with the Medicare Department at the Health Care Center, how are you doing today?” Mr. Bennett responded “I’m still working.... I’m okay.” Clear Health then disconnected the call.

Call 3: March 18, 2021 10:20 am CST:

Bennett received a call from Clear Health at (512) 741-4855. Soundboard Tom’s pre-recorded voice once again appeared on the line for Clear Health, stating:

“Hi! This is Tom. I’m with the Medicare Department at the Health Care Center, how are you doing today?” The voice continued... “We are here to compare your secondary health insurance options to see if you might qualify for something more beneficial. And the best part is there is no cost or obligation on your part for the discounted quote so is your Medicare part A and Part B active right now?” Soundboard Tom went on to awkwardly proclaim: “You sound

1 like a pretty sensible person to me, and I believe you make your own health insurance decisions,
2 right?”

3 Shortly thereafter the call was transferred to a live person, who attempted to sell various
4 insurance plans to Mr. Bennett. In the course of that conversation with the live person, Bennett
5 confirmed it was Defendant Clear Health calling.

6 **Call 4: November 2, 2021 6:08 pm CST:**

7 Mr. Bennett received a call from Clear Health at (512) 777-3692. Soundboard Tom’s
8 pre-recorded voice once again appeared on the line for Clear Health, stating:

9 “Hi! This is Tom. I’m with the Medicare Department at the Health Care Center, how are
10 you doing today?” The voice continued... “We are here to compare your secondary health
11 insurance options to see if you might qualify for something more beneficial. And the best part
12 is there is no cost or obligation on your part for the discounted quote.”

13 Thereafter, Mr. Bennett made it known the calls were unwanted. Specifically, Mr.
14 Bennett stated “I’m on the federal do not call list”. Soundboard Tom responded in non-
15 communicative and meaningless fashion. Instead of addressing Mr. Bennett’s comment about
16 being on the federal Do Not Call list, Soundboard Tom responded by asking Bennett “is your
17 Medicare part A and B active right now so is your Medicare part A and Part B active right
18 now?” The call was thereafter terminated.

19 **Call 5: November 17, 2021 2:48 pm CST:**

20 Mr. Bennett received another call from Clear Health at (512) 777-3692. Soundboard
21 Tom’s pre-recorded voice once again appeared on the line for Clear Health, stating:

22 “Hi! This is Tom. I’m with the Medicare Department at the Health Care Center, how are
23 you doing today?” The voice continued... “We are here to compare your secondary health
24 insurance options to see if you might qualify for something more beneficial. And the best part
25 is there is no cost or obligation on your part for the discounted quote.”

Mr. Bennett asked “is this a recording?” Soundboard Tom responded with clearly
robotic laughter: “hahahaha, yes this is a real person but I understand you being skeptical at the
moment.” Clear Health then terminated the call.

Call 6: November 20, 2021 3:33 pm CST:

Mr. Bennett received another call from Clear Health at (512) 777-3692. Soundboard Tom's pre-recorded voice once again appeared on the line for Clear Health, stating:

"Hi! This is Tom. I'm with the Medicare Department at the Health Care Center, how are you doing today?"

Mr. Bennett asked "Are you a real person?" Soundboard Tom responded with a long pause and then robotic laughter. "Hahahaha, yes I am a real person." Mr. Bennett asked "are you a recording?" Clear Health then disconnected the call.

43. Defendant's phone calls to Plaintiff utilized automatically generated and/or pre-recorded voices.

44. Specifically, Defendant used the same recorded message which identified the same artificial "person" in each call. The tone of Soundboard Tom's voice and the verbage and tone was identical in each of the calls. The voice on the other side would not respond to questions, but would rather follow the same scripts, regardless of what Plaintiff said or asked

45. Defendant's calls were not made for "emergency purposes."

46. Defendant's calls were not critical to the called party's health and there was no exigency to any of the calls.

47. Defendant's incessant calls were bothersome, disruptive, and frustrating for Plaintiff to endure.

48. Plaintiff was annoyed, irritated, upset and experience a sense that his privacy was violated by Defendant as a result of receiving multiple unwanted and unsolicited phone calls after he had long been registered on the National Do Not Call Registry.

49. Furthermore, an online search through the Texas Secretary of State's website at <https://direct.sos.state.tx.us/telephone/TelephoneSearch.asp>, has confirmed that Clear Health is

1 not registered to engage in telephone solicitation within the State of Texas, despite the legal
2 obligation to do so.

3
4
5 **Class Allegations**

6 50. Pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3), Mr. Bennett
7 brings this lawsuit as a class action on behalf of himself and all other similarly situated. This
8 action satisfies the requirements of numerosity, commonality, typicality, and adequacy of
9 representation.

10 51. Upon information and belief, at all times relevant hereto, Clear Health did not
11 provide clear and conspicuous notice that it would make telemarketing calls to consumers
12 before doing so, even if a consumer had placed his or her number on the National Do Not Call
13 Registry.

14 52. Likewise, upon information and belief, at all times relevant hereto, Clear Health
15 did not obtain express written consent or permission to place telemarketing calls to consumers
16 even if a consumer had placed his or her number on the National Do Not Call Registry.

17 53. Clear Health also did not obtain express written consent or permission to place
18 calls to consumers using an artificial or pre-recorded voice.

19 54. Clear Health's calls were made for telemarketing purposes, not for emergency
20 purposes.

21 55. Clear Health's calls were also not for conveying exigent health information.
22
23
24
25

1 56. Furthermore, upon information and belief, Clear Health called hundreds if not
2 thousands of Texas residents with Texas area codes to solicit goods or services without first
3 registering to engage in telephone solicitation with the Texas Office of the Secretary of State.

4 57. Mr. Bennett seeks to represent the following classes:

- 5 1. **Prerecorded Voice Class:** All persons with cell phones during the time
6 period from four years prior to the filing of this action until the date a
7 class is certified, to whom Clear Health or someone acting on its behalf
8 placed a call which utilized an artificial, automatically generated or
9 prerecorded voice. Excluded from the class are all persons who were
10 current or former Clear Health customers at the time they received such
11 calls.
12
13 2. **Do-Not-Call Registry Class:** For the period from four years prior to the
14 filing of this suit until the date a class is certified, all persons in the
15 United States who: (1) received more than phone call from Clear Health
16 or someone acting on its behalf, for the purpose of soliciting goods or
17 services, during a 12-month period; and, (2) received those calls on
18 numbers that registered on the Do Not Call Registry for more than 31
19 days at the time the call(s) were received; and
20
21 3. **Texas Solicitation Class:** For two years prior to the filing of this suit
22 until the date the class is certified, all persons with Texas area codes who
23 received a marketing call or text message from Clear Health (or someone
24 acting on its behalf) and at such time Clear Health had not obtained a
25 registration certificate from the Texas Office of the Secretary of State.

19 58. Mr. Bennett reserves the right to add administrative subclasses, or to amend the
20 definition of the proposed classes, during the lawsuit proceedings.

21 59. The members of the proposed classes are so numerous that joinder of all
22 members is impracticable. Mr. Bennett reasonably believes that hundreds or thousands of
23 people have been harmed by Clear Health's actions. The names and phone numbers of the
24 members of the proposed class are readily identifiable through records available to Clear Health
25 or those acting on its behalf.

1 60. Most members of the proposed classes have suffered damages in an amount such
2 that it would make filing separate lawsuits by individual members economically infeasible.

3 61. On information and belief, Clear Health has called and continues to call/text
4 people who are registered on the National Do Not Call Registry. It is reasonable to expect that
5 Clear Health will continue to make such calls/texts absent this lawsuit.

6 62. Common questions of law and fact exist as to all members of the proposed class
7 and predominate over any questions affecting only individual members. The questions of law
8 and fact common to the proposed class include, but are not limited to:

- 9
- 10 a. Whether Clear Health or someone acting on its behalf placed calls to
11 Bennett and the putative class members using an artificial or pre-recorded
voice without having prior express written consent;
 - 12 b. Whether Clear Health or someone acting on its behalf placed two or more
13 telemarketing calls to Mr. Bennett and the putative class members after
their numbers were registered on the National Do Not Call Registry more
than 31 days;
 - 14 c. Whether Clear Health's policies and procedures for providing disclosure
15 that telemarketing calls would be made to a consumer was adequately
clear and conspicuous;
 - 16 d. Whether Clear Health's policies and procedures for procuring express
17 written consent or permission to place telemarketing calls to consumers
on the Do Not Call Registry were adequate;
 - 18 e. Whether Clear Health's conduct violates 47 U.S.C. § 227(c)(5);
 - 19 f. Whether Clear Health's conduct violates the rules and regulations
implementing the TCPA;
 - 20 g. Whether Mr. Bennett and the putative class members are entitled to
21 increased damages for each violation based on the willfulness of Clear
Health's conduct;
 - 22 h. Whether Clear Health violated Plaintiff and putative class members'
23 rights under the Texas Telephone Solicitation Act of the Texas Business
and Commerce Code by placing telemarketing calls to Texas residents
24 without obtaining a registration certificate from the Office of the
Secretary of State.
- 25

1 63. Mr. Bennett's claims are typical of the claims of the proposed class members
2 because his claims arise from the same practice that gives rise to the claims of the members of
3 the proposed class and is based on the same legal theories.

4 64. Mr. Bennett and his counsel will fairly and adequately protect the interests of the
5 members of the proposed class. Mr. Bennett's interest do not conflict with the interest of the
6 proposed class he seeks to represent. Mr. Bennett has retained lawyers who are competent and
7 experienced in call action, TCPA litigation and consumer law.

8 65. Mr. Bennett's counsel will vigorously litigate this case as a class action, and
9 Bennett and his counsel are aware of their responsibilities to the putative members of the class
10 and will discharge those duties.

11 66. A class action is superior to all individual lawsuits for this controversy. Joinder
12 of all proposed members of the proposed class in one action is impracticable if not impossible
13 and prosecuting hundreds or thousands of individual actions is not feasible. The size of the
14 individual claims is likely not large enough to justify filing a separate action for each claim. For
15 many, if not most, members of the proposed class, a class action is the only procedural
16 mechanism that will allow recovery. Even if members of the proposed class had the resources to
17 pursue individual litigation, that method would be unduly burdensome to the courts. Individual
18 litigation could also result in inconsistent adjudications.

19 67. In contract, a class action is superior in that it will benefit the court and litigating
20 parties through efficiency, economy of scale and unitary adjudication resulting from supervision
21 of the litigation by a single court.
22
23
24
25

1 68. Questions of law and fact, particularly the propriety of calling/texting phone
2 numbers registered on the National Do Not Call Registry, predominate over questions affecting
3 only individual members.

4 69. Clear Health has acted or refused to act on grounds that apply generally to the
5 class, making final injunctive relief or corresponding declaratory relief is appropriate with
6 respect to the class as a whole.

7
8 **Count I - Violations of the Telephone Consumer Protection Act ("TCPA")**
9 **47 U.S.C. § 227(b)**

10 70. Plaintiff incorporates the forgoing paragraphs as though the same were set forth
11 at length herein.

12 71. Mr. Bennett brings this Count individually and on behalf of all others similarly
13 situated.

14 72. The TCPA prohibits placing calls using an automatic telephone dialing system or
15 automatically generated or prerecorded voice to a cellular telephone except where the caller has
16 the prior express consent of the called party to make such calls or where the call is made for
17 emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

18 73. By calling Mr. Bennett and the putative class members with a prerecorded voice,
19 and without prior express consent of the called party to make such calls, Clear Health violated
20 the TCPA including but not limited to 47 U.S.C. § 227(b)(1).

21 74. The TCPA provides a private right of action and statutory damages of \$500 per
22 violation, and up to \$1,500 if the violated is determined to be willful. 47 U.S.C. § 227(b)(3).

23 75. Defendant initiated numerous calls to Plaintiff and the putative class members
24 using an automatically generated or pre-recorded voice.
25

Prayer for Judgment

WHEREFORE, Plaintiff Brady Bennett, individually, and on behalf of all others similarly situated, requests the Court grant the following relief.

- a. Enter an order against Defendant Clear Health, LLC pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3), certifying this action as a class action and appointing Bennett as the class representative;
- b. Enter an order appointing Kimmel & Silverman, P.C. as class counsel;
- c. Enter judgment in favor of Mr. Bennett and the putative class for all damages available under the TCPA, including statutory damages of \$500 per violation of 47 U.S.C. § 227(b) and up to \$1,500 per violation of each subsection if Clear Health, LLC willfully violated the TCPA;
- d. Award Mr. Bennett and the class all expenses of this action, and requiring Clear Health to pay the costs and expenses of class notice and administration; and,
- e. Award Mr. Bennett and the class such further and other relief the Court deems just and appropriate.

Count II - Violations of the Telephone Consumer Protection Act ("TCPA")
47 U.S.C. § 227(c)(5)

80. Mr. Bennett incorporates by reference the allegations of the previous paragraphs as if fully stated in this Count.

81. Mr. Bennett brings this Count individually and on behalf of all others similarly situated.

82. The TCPA provides that it is a violation of the law for a person whose phone number is registered on the National Do Not Call Registry to receive more than one solicitation call on their phone “within any 12-month period by or on behalf of the same entity.” *See* 47 U.S.C. §§ 227(c)(1), (c)(5); 47 C.F.R. § 64.1200(c)(ii).

83. The penalty for each call made in violation of the TCPA’s restrictions on placing telemarketing calls to numbers registered on the National Do Not Call Registry is \$500 per violation and up to \$1,500 per violation if the violation is determined to be willful. *See* 47 U.S.C. §§ 227(c)(5).

84. In addition, the TCPA allows the Court to enjoin Clear Health’s violations of the TCPA’s regulations prohibiting calls to phone numbers registered on the National Do Not Call Registry. *See* 47 U.S.C. §§ 227(c)(5)(A).

85. By calling Mr. Bennett and the putative class members after their numbers were registered on the National Do Not Call Registry, Clear Health violated the TCPA, including but not limited to, 47 U.S.C. §§ 227(c)(1) and the TCPA’s corresponding regulations.

86. Clear Health knew or should have known that Mr. Bennett and the putative class members had their numbers registered on the Do Not Call Registry.

87. Bennett and the putative class members are entitled to damages of \$500.00 per

1 violation for each call placed by Clear Health and up to \$1,500.00 per violation if the Court
2 finds Clear Health willfully violated the TCPA.

3 **Prayer for Judgment**

4 WHEREFORE, Plaintiff Brady Bennett, individually, and or behalf of all other
5 similarly situated, requests the Court grant the following relief:

- 6 a. Enter an order against Defendant Clear Health, LLC pursuant to Federal
7 Rule of Civil Procedure 23(a), (b)(2) and (b)(3), certifying this action as a
8 class action and appointing Bennett as the class representative;
- 9 b. Enter an order appointing Kimmel & Silverman, P.C as class counsel;
- 10 c. Enter judgment in favor of Mr. Bennett and the putative class for all
11 damages available under the TCPA, including statutory damages of \$500
12 per violation of 47 U.S.C. § 227(c) and up to \$1,500 per violation of each
13 subsection if Clear Health, LLC willfully violated the TCPA;
- 14 d. Enter a judgment in favor of Mr. Bennett and the putative class that
15 enjoins Clear Health from violating the TCPA's regulations prohibiting
16 Clear Health from calling/texting numbers registered on the National Do
17 Not Call Registry;
- 18 e. Award Mr. Bennett and the class all expenses of this action, and
19 requiring Clear Health to pay the costs and expenses of class notice and
20 administration; and,
- 21 f. Award Mr. Bennett and the class such further and other relief the Court
22 deems just and appropriate.

23 **Count III – Violations of § 302.101 et seq. of**
24 **The Texas Business & Commercial Code**

25 88. Plaintiff incorporates by reference the allegations of the previous paragraphs as if
fully stated in this count.

89. Bennett received solicitation calls from Clear Health while located in Texas on
his phone with a Texas area code.

90. §302.101 of the Texas Business & Commerce Code prohibits sellers from
engaging in telephone solicitation from a location in this state or to a purchaser located in this

1 state unless the seller obtains a registration certificate from the Office of the Secretary of State
2 for the business location from which the solicitation is made.

3 91. Clear Health violated § 302.101 of the Texas Business & Commerce Code when
4 it engaged in telephone solicitation toward Plaintiff without obtaining a registration certificate
5 from the Office of the Secretary of State.

6 92. §302.302(a) of the Texas Business & Commerce Code provides that a person
7 who violates this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
8 Furthermore, §302.302(d) provides that the party bringing the action is also entitled to recover
9 all reasonable costs of prosecuting the action, including court costs and investigation costs,
10 deposition expenses, witness fees, and attorney fees.

11 93. Bennett and the putative class members are entitled to damages of \$5,000.00 per
12 violation for each unlawful call, as well as attorneys' fees and costs.
13

14
15 **Prayer for Judgment**

16 WHEREFORE, Plaintiff Brady Bennett, individually, and on behalf of all others
17 similarly situated, request the Court grant the following relief:

- 18 a. Enter an order against Clear Health, pursuant to Federal Rule of Civil
19 Procedure Rule 23, certifying this action as a class action and appointing
20 Plaintiff Brady Bennett as representatives of the class;
21 b. Enter an order appointing Kimmel & Silverman, P.C as counsel for the class;
22 c. Enter judgment in favor of Plaintiff, and the putative class members for all
23 damages available under Texas Commercial & Business Code, including
24 statutory damages of \$5,000 per violation;
25 d. Enter judgment in favor of Plaintiff and the putative class members against
Clear Health and enjoining Clear Health from placing marketing calls before
obtaining a registration certificate from the Office of the Secretary of State
for the business location from which the solicitation is made;

- 1 e. Award Plaintiff and the class all expenses of this action, and requiring
2 Defendant to pay the costs and expenses of class notice and claims
3 administration;
4 f. Award Plaintiff and the class all reasonable costs of prosecuting the action,
5 including court costs and investigation costs, deposition expenses, witness
6 fees, and attorney fees; and,
7 g. Award Plaintiff the class such further and other relief the Court deems just
8 and appropriate.

9 **Demand for Jury Trial**

10 PLEASE TAKE NOTICE that Plaintiff, BRADY BENNETT, demands a jury trial in
11 this case.

12 Respectfully submitted,

13
14 Kimmel & Silverman, P.C.

15 Dated: December 7, 2021

16 By: /s/ Jacob U. Ginsburg
17 Jacob U. Ginsburg, Esq.
18 Craig T. Kimmel, Esq.
19 30 East Butler Ave.
20 Ambler, PA 19002
21 Phone: (215) 540-8888 x 104
22 Facsimile: (877) 788-2864
23 Email: jginsburg@creditlaw.com
24 kimmel@creditlaw.com
25 teamkimmel@creditlaw.com